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HOUSE RESEARCH ORGANIZATION

———— daily floor report ————

Thursday, April 16, 2015
84th Legislature, Number 51
The House convenes at 10 a.m.

Two joint resolutions and 14 bills are on the daily calendar for second reading consideration today. They are listed on the following page.



Alma Allen
Chairman
84(R) - 51

HOUSE RESEARCH ORGANIZATION

Daily Floor Report

Thursday, April 16, 2015

84th Legislature, Number 51

HJR 73 by Geren	Authorizing certain charitable raffles	1
HJR 75 by Bonnen	Authorizing homestead exemptions for spouses of disabled veterans	4
HB 975 by Geren	Allowing sports team charitable foundations to conduct raffles	7
HB 992 by Bonnen	Homestead exemptions for surviving spouses of certain disabled veterans	12
HB 1690 by King	Establishing procedures for public integrity prosecutions	15
HB 643 by Harless	Allowing sureties to file motion to discharge bail in certain circumstances	22
HB 896 by Hernandez	Describing breach of computer security to specify obtaining data	25
HB 1769 by Zerwas	Pre-inspection license for certain assisted living license applicants	28
HB 1771 by Raney	Voluntary donation of state employee sick leave time	33
HB 1853 by Button	Allowing cities to provide containers for property of evicted persons	36
HB 1926 by Kacal	Creating an alternative governance structure for municipal power agencies	39
HB 1914 by Bonnen	Parole reconsideration for aggravated sexual assault, capital murder	45
HB 1925 by Geren	Texas Farm and Ranch Lands Conservation Program transfer to TPWD	49
HB 2769 by Rodriguez	Extending an energy efficiency loan pilot program for certain nonprofits	53
HB 2848 by Crownover	Authorizing annual Higher Education Fund allocations	56
HB 3633 by Herrero	Amending conditions for payment of legal costs by indigent defendants	61

SUBJECT: Authorizing certain charitable raffles

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — Smith, Gutierrez, Geren, Goldman, Kuempel, Miles, D. Miller
0 nays
2 absent — Guillen, S. Thompson

WITNESSES: For — Robert Ryan, Houston Astros Foundation; (*Registered, but did not testify*: Neal T. “Buddy” Jones, Dallas Cowboys; Jessica Dunn, Jason Farris, and Ty Richardson, Dallas Stars Foundation; Alan Tompkins, FC Dallas; Jim Grace, Houston Texans; Laura Dixon and Shermeka Hudson, Spurs Sports and Entertainment; Joseph Januszewski, Texas Rangers Baseball Club; Kate Cassidy and Karin Morris, Texas Rangers Baseball Foundation)

Against — (*Registered, but did not testify*: Rob Kohler, Christian Life Commission of the Baptist Convention of Texas)

BACKGROUND: Texas Constitution, Art. 3, sec. 47(a) requires the Legislature to enact laws prohibiting lotteries and gift enterprises, with a few exceptions. One exception is an amendment adopted in 1989 that allows the Legislature to enact a law permitting charitable raffles conducted by a qualified religious society, volunteer fire department, volunteer emergency medical service, or non-profit organization. This provision requires that all proceeds from the sale of raffle tickets be spent for the charitable purposes of the organization and that the charitable raffle be conducted and promoted exclusively by the members of the organization.

DIGEST: HJR 73 would propose an amendment to Texas Constitution, Art. 3, sec. 47, authorizing the Legislature to allow a professional sports team charitable foundation to conduct charitable raffles under the terms and conditions imposed by law. The law could authorize the charitable foundation to pay reasonable advertising, promotional, and administrative

expenses with the raffle proceeds.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2015. The ballot proposal would read: “The constitutional amendment authorizing the legislature to permit professional sports team charitable foundations to conduct charitable raffles.”

**SUPPORTERS
SAY:**

HJR 73, along with its enabling legislation, HB 975 by Geren, would increase philanthropic donations by allowing charitable foundations of Texas professional sports teams to hold charitable raffles and use proceeds to pay for reasonable operating expenses. Expanding these popular raffles would allow teams to give back even more to the communities they represent.

The two measures would work together to permit the charitable foundations of professional sports teams to hold charitable raffles for cash prizes at each of their team’s home games. Twenty-five states have laws that allow sports teams to hold charitable raffles. These states allow for a particular type of raffle called a 50/50 raffle, in which half of the proceeds go to charity and the other half is paid to the winner. Texas is one of only five states that has professional sports team franchises but does not allow 50/50 raffles, which are more popular than other raffles because they offer a cash prize. The more raffle tickets are sold, the more money is raised for charitable organizations, which benefits local communities and important causes. HJR 73 would make these types of charitable raffles possible by authorizing the Legislature to enact laws allowing them.

HJR 73 would not authorize laws to create new forms of gambling. The proposed amendment merely would authorize the Legislature to craft laws governing how professional sports team charitable foundations may conduct raffles, including using raffle proceeds to pay for reasonable operating expenses.

**OPPONENTS
SAY:**

HJR 73 would increase the number of exceptions to a sensible constitutional prohibition against lotteries and gift enterprises. If approved by voters, the proposal would be the first time in 24 years that the Texas Constitution was amended for gambling purposes – and only the fourth time since the Constitution was adopted.

With every amendment to the Constitution, people come up with new ways to push the limits of what is allowed under the laws it authorizes. Some gambling games and machines exist today because they are protected by technicalities in the law or because they simply are not being regulated. Opening the Constitution to even more interpretation and flexibility could allow the enactment of future legislation that was never intended by this proposal, such as electronic raffles at race tracks or bingo halls. This proposed amendment could open the door to forms of gambling more serious than charitable raffles.

NOTES: HB 975 by Geren, et al., the enabling legislation for HJR 73, is set for second-reading consideration on today's calendar.

According to the Legislative Budget Board's fiscal note, the cost to the state for publication of the resolution is \$118,681.

The Senate companion bill, SJR 39 by Fraser, was reported favorably by the Senate Committee on Natural Resources and Economic Development on April 1.

SUBJECT: Authorizing homestead exemptions for spouses of disabled veterans

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — (*Registered, but did not testify*: Ned Munoz, Texas Association of Builders)

Against — None

On — (*Registered, but did not testify*: Mike Esparza and Tim Wooten, Comptroller of Public Accounts; Jeff Williford, Texas Veterans Commission)

BACKGROUND: Tax Code, sec. 11.131(b) fully exempts the residence homesteads of totally disabled veterans from property taxes.

In 2011, the 82nd Legislature enacted SB 516 by Patrick and SJR 14 by Van de Putte, which fully exempt the residential homesteads of totally disabled veterans' surviving spouses from property taxes if:

- the property received the full homestead exemption under the disabled veteran's status;
- the property was the residence homestead of the surviving spouse when the disabled veteran died;
- the property remains the residence homestead of the surviving spouse; and
- the surviving spouse has not remarried.

The exemption is applied only to the homesteads of surviving spouses of totally disabled veterans who died after January 1, 2010, the effective date of HB 3613 by Otto, which created Tax Code, sec. 11.131(b).

This exemption is allowed to follow the surviving spouse to a new homestead, although it would be limited to the dollar amount of the exemption in the prior qualifying homestead.

DIGEST:

HJR 75 would amend Texas Constitution, Art. 8 to extend the current homestead property tax exemption that applies to the surviving spouse of a totally disabled veteran who died on or after January 1, 2010, to include the surviving spouse of a totally disabled veteran who:

- died before January 1, 2010; and
- would have qualified for the full exemption on the homestead's entire value if it had been available to totally disabled veterans at that time.

A surviving spouse who otherwise qualified would be entitled to an exemption of the same portion of the market value of the same property to which the disabled veteran's exemption would have applied.

This change would apply only to tax years beginning on or after January 1, 2016.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2015. The ballot proposal would read: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a 100 percent or totally disabled veteran who died before the law authorizing a residence homestead exemption for such a veteran took effect."

**SUPPORTERS
SAY:**

HJR 75, in conjunction with its enabling legislation, HB 992 by D. Bonnen, would allow the Legislature to provide a valuable form of tax relief for the families of deceased disabled veterans. Any fiscal impact on a single taxing district would be minimal, but the impact on individual families of totally disabled military veterans would be considerable.

Current law unintentionally creates two classes of surviving spouses of totally disabled veterans: those whose spouses died before January 1, 2010, and those whose spouses died on or after that date. Those whose

spouses died before 2010 receive a full property tax exemption on their homesteads, but those whose spouses died after are not eligible to inherit qualification for the exemption.

According to estimates by the comptroller, this resolution would allow roughly 3,800 surviving spouses of totally disabled veterans who died before 2010 to claim this exemption, providing a lasting form of appreciation to those who have sacrificed so much.

**OPPONENTS
SAY:**

The Legislative Budget Board's fiscal note on the enabling legislation, HB 992 by D. Bonnen, indicates that school districts, municipalities, counties, and other special taxing districts (such as hospitals) would lose some tax revenue under the bill and proposed amendment. The Legislature should be mindful of HJR 75's potential impact on these local taxing entities.

NOTES:

The enabling legislation, HB 992 by D. Bonnen, is on today's calendar.

According to the Legislative Budget Board's fiscal note, the cost to the state for publication of the resolution is \$118,681.

The Senate companion resolution, SJR 40 by Zaffirini, was referred to the Senate Finance Committee on March 9.

SUBJECT: Allowing sports team charitable foundations to conduct raffles

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 6 ayes — Smith, Gutierrez, Geren, Goldman, Kuempel, D. Miller
0 nays
3 absent — Guillen, Miles, S. Thompson

WITNESSES: For — Robert Ryan, Houston Astros Foundation; Joseph Januszewski, Texas Rangers Baseball Club; (*Registered, but did not testify:* Neal T. “Buddy” Jones, Dallas Cowboys; Jessica Dunn, Jason Farris, and Ty Richardson, Dallas Stars Foundation; Alan Tompkins, FC Dallas; Jim Grace, Houston Texans; Laura Dixon and Shermeka Hudson, Spurs Sports and Entertainment; Kate Cassidy and Karin Morris, Texas Rangers Baseball Foundation)

Against — None

BACKGROUND: Texas Constitution, Art. 3, sec. 47(a) requires the Legislature to enact laws prohibiting lotteries and gift enterprises, with a few exceptions. One exception is an amendment adopted in 1989 that allows the Legislature to enact a law permitting charitable raffles conducted by a qualified religious society, volunteer fire department, volunteer emergency medical service, or non-profit organization.

Occupations Code, sec. 2002.052(b) allows organizations to hold no more than two charitable raffles in a calendar year for which tickets are sold or offered for sale or prizes are awarded. Sec. 2002.053 requires all proceeds from the sale of raffle tickets to be spent for the charitable purposes of the qualified organization. Sec. 2002.056(a) prohibits use of money as a prize.

DIGEST: HB 975 is the enabling legislation for HJR 73 by Geren, which would authorize the Legislature by general law to permit a professional sports team charitable foundation to conduct charitable raffles and to use the

raffle proceeds to pay for reasonable advertising, promotional, and administrative expenses.

HB 975 would create the Professional Sports Team Charitable Foundation Raffle Enabling Act as Occupations Code, ch. 2004. The act would define a “professional sports team charitable foundation” as an organization that was incorporated under Texas law, was associated with a major professional sports team, and was formed for charitable purposes.

A foundation of this kind would be qualified to conduct charitable raffles if it:

- was associated with a professional sports team that had a home venue in Texas;
- did not distribute any of its income to its members, officers, or governing body, other than a reasonable compensation for services;
- had existed for at least three years before a raffle allowed by this bill was conducted;
- did not devote a substantial part of its activities to attempting to influence legislation or participate in political campaigns, including making campaign contributions;
- was considered an exempt charitable organization under Internal Revenue Code, 501(c)(3); and
- did not have or recognize any local chapter, affiliate, unit, or subsidiary organization in Texas.

A qualified foundation could conduct a charitable raffle during each home game of the professional sports team associated with the foundation to provide revenue for the foundation’s charitable purposes. The foundation could award to a raffle winner selected by random draw a cash prize of no more than 50 percent of the gross proceeds collected from the sale of raffle tickets.

HB 975 would require that all proceeds from the sale of raffle tickets, except the amounts deducted for reasonable operating expenses and cash prizes, be used for the charitable purposes of the foundation. For each raffle, the foundation could deduct no more than 10 percent of the gross

proceeds from the sale of raffle tickets to pay the reasonable operating expenses of the raffle. Reasonable operating expenses would include categories such as promotional activities, administrative expenses, and costs for the equipment necessary to sell raffle tickets, conduct random drawings to select winners, and continuously calculate various amounts, such as the amount of money collected and the number of tickets sold.

Only employees or volunteers of the foundation or the associated professional sports team could sell the raffle tickets. Purchasers of raffle tickets would have to be 18 or older.

HB 975 would create four criminal offenses. A person would commit an offense if the person:

- accepted any form of payment other than U.S. currency for a raffle ticket;
- sold or offered to sell a raffle ticket to someone they knew was not at least 18 years old;
- purchased a raffle ticket with the proceeds of a check issued as payment under the financial assistance program administered under Human Resources Code, ch. 31; or
- misrepresented their age or displayed fraudulent evidence that the person was at least 18 years old to purchase a raffle ticket.

These offenses would be class C misdemeanors (maximum fine of \$500). The bill would make it a defense to prosecution that the actor reasonably believed that the conduct was permitted or that the conduct actually was authorized by this bill.

The bill would allow an action to be brought by a county attorney, district attorney, criminal district attorney, or the attorney general for a permanent or temporary injunction or a temporary restraining order that would prohibit conduct involving a raffle or similar procedure that violated or threatened to violate state law related to gambling and was not authorized by law. Venue for such an action would be in the county where the conduct occurred or the county where a defendant of the action lived.

The bill would require the following information to be printed on each

raffle ticket:

- the name of the raffle and the sales station where the ticket was purchased;
- the date of the random drawing and the manner in which the winning raffle ticket would be announced;
- the procedure and location for claiming a prize;
- the amount of time the prize winner would have to claim the prize; and
- the logo of the foundation, the logo of the associated professional sports team, or both.

This bill would take effect January 1, 2016, but only if the constitutional amendment authorizing the Legislature to permit professional sports team charitable foundations to conduct charitable raffles was approved by the voters. If that amendment were not approved by the voters, this bill would have no effect.

SUPPORTERS
SAY:

HB 975 would provide charitable foundations of professional sports teams an opportunity to increase their contributions and support their causes by allowing them to hold charitable raffles. The bill would allow for cash prizes to be awarded to charitable raffle winners at certain sporting events and would authorize these foundations to hold charitable raffles at each home game of their sports team.

HB 975 is enabling legislation for HJR 73 by Geren, which would amend the Constitution to allow the Legislature to permit sports team charitable foundations to conduct charitable raffles and use part of the raffle proceeds for reasonable operating expenses.

Many Texas professional sports teams have charitable foundations associated with them. Currently, laws limit who may conduct the raffles, what prizes may be offered, and how many may be conducted per year. Twenty-five states have laws that allow sports teams to hold charitable raffles, commonly called 50/50 raffles because half of the proceeds go to charity and the other half is paid to the winner. Texas is one of only five states that has professional sports team franchises but does not allow

50/50 raffles. These raffles are more popular than others because they offer a cash prize. By opening the door to these types of charitable raffles, HB 975 and HJR 73 would put more money at the disposal of charitable foundations doing important work serving Texans. Texas has many professional sports teams, so the benefits of this bill would be far reaching.

Because the bill is narrowly written, it would protect against improperly conducted raffles in the future. Allowing charitable raffles at sporting events would ensure that the raffle was a secondary activity to the game. Sporting events most likely would not become a popular spot for people who wanted to gamble because they cost money to attend and because there is only one prize winner per game. The narrow language of the bill would make it unlikely that it would result in the proliferation of profit-making gambling activities.

OPPONENTS
SAY:

HB 975 could open the door to allowing more gambling ventures in Texas. Although the bill would address only professional sports team charitable foundations, there are always people who push the limit on what is allowed under the law. Some gambling games and machines exist today because they are protected by technicalities or simply are not being regulated. For example, historical racing and other electronic forms of sweepstakes-genre games have become a problem in Texas over the past few years. By creating another avenue for potential legal workarounds, the bill could allow gambling to become more prevalent in Texas.

NOTES:

The authorizing constitutional amendment, HJR 73 by Geren, et al. is set for second-reading consideration on today's Constitutional Amendments Calendar.

The Senate companion bill, SB 898 by Fraser, was reported favorably from the Senate Committee on Natural Resources and Economic Development on April 1.

SUBJECT: Homestead exemptions for surviving spouses of certain disabled veterans

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner, Wray

0 nays

WITNESSES: For — Olie L. Pope, Jr., County Veteran Service Officers Association of Texas; Jim Brennan, Texas Coalition of Veteran Organizations
(*Registered, but did not testify*: Ned Munoz, Texas Association of Builders)

Against — None

On — (*Registered, but did not testify*: Mike Esparza and Tim Wooten, Comptroller of Public Accounts; Wayne Pulver, Legislative Budget Board; Jeff Williford, Texas Veterans Commission)

BACKGROUND: Tax Code, sec. 11.131(b) fully exempts the residence homesteads of totally disabled veterans from property taxes.

In 2011, the 82nd Legislature enacted SB 516 by Patrick and SJR 14 by Van de Putte, which fully exempts the residential homesteads of totally disabled veterans' surviving spouses from property taxes if:

- the property had received the full homestead exemption under the disabled veteran's status;
- the property was the residence homestead of the surviving spouse when the disabled veteran died;
- the property remains the residence homestead of the surviving spouse; and
- the surviving spouse has not remarried.

The exemption is applied only to the homesteads of surviving spouses of totally disabled veterans who died on or after January 1, 2010, the

effective date of HB 3613 by Otto, which created Tax Code, sec. 11.131(b).

This exemption is allowed to follow the surviving spouse to a new homestead, although it would be limited to the dollar amount of the exemption in the prior qualifying homestead.

DIGEST: HB 992 is the enabling legislation for HJR 75 by D. Bonnen. The bill would extend the homestead exemption in existing law that applies to the surviving spouse of a totally disabled veteran who died on or after January 1, 2010, to the surviving spouse of a totally disabled veteran who:

- died before January 1, 2010; and
- would have qualified for the full exemption on the homestead's entire value if it had been available to totally disabled veterans at that time.

A surviving spouse who otherwise qualified would be entitled to an exemption from taxation of the appraised value of the same property to which the disabled veteran's exemption would have applied if it had been authorized on the date the disabled veteran died.

This change would apply only to the tax years beginning on or after January 1, 2016.

The bill would take effect January 1, 2016, if the Texas Constitution was amended to authorize the Legislature to provide for these changes. Otherwise, the bill would have no effect.

SUPPORTERS SAY: HB 992 would provide a valuable form of tax relief for the spouses of deceased disabled veterans. Any fiscal impact on a single taxing district would be minimal, but the impact on individual families of totally disabled military veterans would be considerable.

Current law unintentionally creates two classes of surviving spouses of totally disabled veterans — those whose spouses died before January 1, 2010, and those whose spouses died after that date. Those whose spouses died before 2010 receive a full property tax exemption on their

homestead, but those whose spouses died after are not eligible to inherit qualification for the exemption.

According to estimates by the comptroller, this bill would allow roughly 3,800 surviving spouses of totally disabled veterans who died before 2010 to claim this exemption, providing a lasting form of appreciation to those who have sacrificed so much.

**OPPONENTS
SAY:**

The Legislative Budget Board's fiscal note on HB 992 indicates that school districts, municipalities, counties, and other special taxing districts (such as hospitals) would lose some tax revenue as a result of the bill in conjunction with voter approval of HJR 75. The Legislature should be mindful of this bill's impact on these local taxing entities.

NOTES:

The proposed constitutional amendment that would authorize this legislation, HJR 75 by D. Bonnen and Martinez Fischer, is scheduled for second-reading consideration on today's calendar.

The Legislative Budget Board's fiscal note estimates that the bill would have a negative impact of about \$1.3 million to general revenue-related funds during fiscal 2016-17 and \$13.2 million through fiscal 2018-19 due to the projected need to replace a loss in school property tax revenues with state funds.

The Senate companion bill, SB 910 by Zaffirini, was referred to the Senate Finance Committee on March 9.

SUBJECT: Establishing procedures for public integrity prosecutions

COMMITTEE: General Investigating and Ethics — committee substitute recommended

VOTE: 4 ayes — Kuempel, S. Davis, Hunter, Larson

3 nays — Collier, Moody, C. Turner

WITNESSES: For — None

Against — Jules Dufresne, Common Cause Texas; Carol Birch, Public Citizen, Texans for Public Justice; Sara Smith, Texas Public Interest Research Group; (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas)

On — Brantley Starr, Office of Attorney General; David Slayton, Office of Court Administration, Texas Judicial Council; Steven McCraw, Texas Department of Public Safety; Robert Kepple, Texas District and County Attorneys Association; Gregg Cox, Travis County District Attorney's Office, Public Integrity Unit

BACKGROUND: The Travis County District Attorney established the Public Integrity Unit in 1978 to investigate and prosecute crimes related to state government. Cases include fraud and financial crimes targeting various state programs and public corruption cases against state employees and officials involving offenses in Travis County. The Legislature has funded the unit since the early 1980s. The unit's funding for fiscal 2014-15 was vetoed by the governor.

DIGEST: CSHB 1690 would add to Government Code, ch. 41 a new subchapter establishing procedures for public integrity prosecutions.

The bill would include the following as offenses against public administration:

- offenses listed in Title 8 of the Penal Code, such as bribery and coercion, when committed by a state officer or state employee in

connection with the powers and duties of the state office or employment;

- conduct that violates Government Code requirements for the Legislature, House speaker, and lobbyists, including lobbyist registration, campaign finance, and personal financial disclosure requirements;
- violations of nepotism laws committed by state officers; and
- violations of Election Code regulations of political funds and campaigns committed in connection with a campaign for or the holding of state office or an election on a proposed constitutional amendment.

The bill would not limit the authority of the attorney general to prosecute election law offenses.

Investigations. Officers of the Texas Rangers would be required to investigate formal or informal complaints alleging an offense against public administration. If there were a conflict of interest involving an investigation of a member of the executive branch, the Rangers could refer an investigation to the local law enforcement agency that would otherwise have authority to investigate the complaint. Local law enforcement would have to comply with all the bill's requirements

Prosecutions. Investigations that demonstrate a reasonable suspicion that an offense occurred would be referred to the prosecutor in either:

- the county where the defendant resides; or
- the county where the defendant resided when the defendant was elected to a statewide office subject to a residency requirement in the Texas Constitution.

A prosecutor could request to be recused from a case for good cause. If the court with jurisdiction over the complaint approved the request, an alternate prosecutor would be selected by a majority vote of the presiding judges of the state's nine administrative judicial regions. The administrative judges would be required to select an alternate prosecutor from the same administrative judicial region and would have to consider

the proximity of the county or district represented by the new prosecutor to the county in which venue is proper. The alternate prosecutor could pursue a waiver to extend the statute of limitations for the offense only with approval of a majority of the administrative judges.

CSHB 1690 would remove the Travis County district attorney from prosecutions for contempt of the Legislature under Government Code, sec. 301.027. When the Legislature was not in session, the Senate president or House speaker would be required to certify a statement of facts concerning the contempt allegations to the appropriate prosecuting attorney under the bill's venue provisions. The prosecuting attorney or an alternate prosecutor selected under the bill's recusal provisions would have to bring the matter before the grand jury for action and, if the grand jury returned an indictment, would have to prosecute the indictment.

Confidentiality. The bill would require state agencies and local law enforcement agencies to cooperate with public integrity prosecutions by providing information requested by the prosecutor and would exempt disclosed information from state public information laws.

The bill would take effect September 1, 2015, and would apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 1690 would establish a fairer process for investigating and prosecuting elected officials for public corruption crimes, such as bribery and violations of ethics laws. Complaints would be investigated by the Texas Rangers and prosecuted in the home county of the officer or employee. This process would disperse power from a single district attorney's office in the state capital to prosecutors around the state. This spreading of authority could help alleviate concerns that politics has played a role in certain high-profile prosecutions of state officials in Travis County.

The Texas Rangers are an elite law enforcement agency with sufficient training and experience to conduct public integrity investigations. The Rangers already have a unit dedicated to public corruption cases and could easily absorb the small number of complaints brought against state officials each year. The Rangers also have civil service protections that

could give them an added layer of independence from political pressure that could be connected to an investigation. The bill would guard against possible conflicts of interest by allowing the Rangers to refer cases involving members of the state executive branch to a local law enforcement agency.

The bill would create a neutral venue and would allow defendants to be tried by a jury of their peers. Contrary to opponents' suggestions that the hometown venue would favor a defendant, the criminal prosecution likely would be more accessible to local voters and covered by local media. In addition, up to \$500,000 could be made available through a contingency rider in Art. 11 of the general appropriations act to pay for witness travel and other costs associated with the bill's venue provisions. There is precedent in state law for trying defendants in the county where they reside for offenses committed elsewhere. For example, Code of Criminal Procedure, art. 13.10 provides that certain offenses committed outside Texas by a state officer acting under state authority may be prosecuted in the county where the officer resides.

If a local prosecutor had a conflict of interest, the bill would create a process for that prosecutor to ask to be recused and for an alternate prosecutor to be appointed. Opponents claim that the bill relies too much on a prosecutor's willingness to be recused, but public pressure likely would force the hand of a prosecutor who should step aside but declined to do so.

The bill would not disturb Travis County's jurisdiction over offenses involving insurance fraud and motor fuels tax collections. The Travis County D.A.'s Public Integrity Unit would continue to prosecute fraud and financial crimes targeting various state programs and certain crimes committed by state employees. These cases make up the vast majority of the Public Integrity Unit's caseload. Under the House-passed budget, the unit would receive \$6.5 million in general revenue and general revenue dedicated funds for fiscal 2016-17, contingent on the passage of HB 1690 or similar legislation.

Concern about the confidentiality of information provided in connection with public integrity prosecutions is overstated. Current law contains

exceptions from public information laws for records and information if the release of the information would interfere with a criminal investigation or prosecution.

OPPONENTS
SAY:

CSHB 1690 could result in less accountability in public corruption cases against state officers and state employees by giving those defendants a “home-field advantage” during a prosecution. The bill would make a significant change from the usual prosecution of crimes in the county where they occurred. This could lead to troubling situations, such as a public servant accused of official oppression for actions taken while on assignment in one part of the state being tried far from the county where the acts occurred.

Placing venue in an official’s home county would set the stage for crony politics. For example, the local prosecutor overseeing the case may be friends or political acquaintances with the official being prosecuted. The bill lacks any requirements for recusal of a prosecutor and leaves it up to a prosecutor to self-report and ask for a recusal.

In the event that a prosecution was transferred to another county, the bill also could increase costs for public corruption prosecutions if witnesses were required to travel to a county far from where the crime occurred. An estimated \$500,000 could be needed to reimburse counties for costs associated with prosecuting officials in their home counties.

There could be conflicts of interest involving the Texas Rangers, which is a division of the Texas Department of Public Safety (DPS). The DPS director is hired by the Public Safety Commission, whose five members are appointed by the governor. Many other high-ranking state executives also are appointed by the governor. While the Rangers could refer an investigation involving a member of the executive branch to a local law enforcement agency, they would not be required to transfer the case.

CSHB 1690 would exempt from state public information laws information from state agencies and local law enforcement provided in connection with public integrity prosecutions. This blanket exemption could result in information that normally would be available to the public through open records laws becoming off limits when a local prosecutor takes over a case.

The bill is based on incorrect perceptions that the Travis County District Attorney has made partisan decisions in public corruption prosecutions. Since its inception, the D.A.'s Public Integrity Unit has prosecuted elected officials from both political parties. Additionally, the bill could complicate the Travis County D.A.'s ability to pursue certain charges involving employees who lived outside Travis County.

NOTES:

The author of CSHB 1690 planned to offer floor amendments to:

- remove violations of lobby registration laws as an offense covered by the bill;
- define “state agency” as an executive branch entity to ensure that investigators must subpoena judicial and legislative records;
- clarify that Government Code offenses must be committed in connection with the powers and duties of the state office or state employment or by a candidate for state office;
- clarify that another state agency having primary responsibility for investigating a complaint alleging an offense against public administration could continue to perform those investigations;
- require a prosecutor selected as an alternate to the home county prosecutor to be appointed only with the prosecutor’s consent;
- place venue in the county where the defendant resided at the time the offense was committed; and
- clarify that venue for prosecuting a statewide elected official would be the county in which the defendant resided at the time the defendant was initially elected to statewide office.

Unlike the filed bill, the committee substitute would:

- require investigations of complaints alleging offenses against public administration to be conducted by an officer of the Texas Rangers;
- allow the Rangers to refer complaints to local law enforcement agencies if the Rangers have a conflict of interest;
- place venue in a defendant’s county of residence or the county where certain statewide officials previously resided; and
- permit local prosecutors to be recused for good cause and establish

a process for their replacement.

SB 10 by Huffman concerning offenses against public administration was passed by the Senate on April 9.

SUBJECT: Allowing sureties to file motion to discharge bail in certain circumstances

COMMITTEE: Corrections — committee substitute recommended

VOTE: 7 ayes — Murphy, J. White, Allen, Keough, Krause, Schubert, Tinderholt
0 nays

WITNESSES: For — Ken Good, Professional Bondsmen of Texas; (*Registered, but did not testify*: Wynn Dillard and John McCluskey, Professional Bondsmen of Texas; Douglas Smith, Texas Criminal Justice Coalition)

Against — (*Registered, but did not testify*: Michael Butera, Harris County District Attorney's Office; Tiana Sanford, Montgomery County District Attorney's Office; John Dahill, Texas Conference of Urban Counties; Tim Labadie, Travis County Attorney's Office; Julie Wheeler, Travis County Commissioners Court)

BACKGROUND: Under Code of Criminal Procedure, art. 32.01, if a criminal defendant is in custody or released on bail, the case must be dismissed and the bail discharged if criminal charges are not brought within certain deadlines. The charges must be brought within 180 days of the defendant being committed or admitted to bail or within other deadlines tied to the end of a court's term, whichever is later. There is an exception to this requirement under which courts do not have to dismiss a case and discharge bail if the prosecutor shows good cause.

DIGEST: CSHB 643 would authorize a surety to file a motion to have bail discharged if criminal charges were not brought within the deadlines in Code of Criminal Procedure, art. 32.01.

The bill would take effect September 1, 2015.

SUPPORTERS SAY: CSHB 643 would provide clear authority for sureties who issue bail bonds in criminal cases to request that bail be discharged if no criminal charges were filed within certain deadlines. While current law says that bail must be discharged in these cases, discharge does not always occur, and the

authority for sureties to ask for the discharge is unclear.

Although rare, in some cases no action is taken to discharge bail even though the deadline has passed for charges to be filed. This can occur if the prosecutor or defendant does not file the necessary motion with a court. While some courts allow sureties to make such a motion to take a defendant off of bail, other courts do not.

This situation creates a problem for sureties because they continue to have the liability for the bond even though the case did not move forward and the deadline has passed for charges to be filed. Continuing to have this liability affects the sureties' business because there are limits on the amount of potential liability sureties can have at any time.

CSHB 643 would resolve this situation by authorizing sureties to file a motion to discharge bail. This authorization would apply only to a motion to discharge bail and would not apply to the criminal charges in the case. Decisions on such motions would continue to be made individually, and there would be no requirement that courts automatically discharge the bail. This process would align with provisions in Code of Criminal Procedure, art. 22.13 that recognize a defense for sureties from bond forfeiture in certain cases in which a prosecution was not continued.

The bill would not cause problems with the process of filing motions or having bail discharged. The requests authorized by the bill would use the existing procedures for filing motions, and courts would use their existing practices for making decisions on those motions. Prosecutors and courts are well aware of these procedures, so there should be no confusion about the filing of or the ruling on such a motion.

**OPPONENTS
SAY:**

CSHB 643 would authorize sureties to file motions without establishing the checks and balances necessary to ensure that the process was fair and that others involved in the case were part of the process. For example, prosecutors should have to receive notice of any request to have bail discharged, and courts could have a standard for ruling on the motion. Without these, it could be confusing if courts sign orders without prosecutors knowing what occurred or why.

It is rare that bail is not discharged under the circumstances in Code of Criminal Procedure, art. 32.01. In those unusual instances, sureties should work with prosecutors to remedy the situation and have a request to discharge the bail filed as provided for under current law.

NOTES:

Unlike the committee substitute, the original bill would have required courts to dismiss the prosecution and discharge bail on its own motion or on the motion of a defendant or the prosecutor if charges had not been timely filed.

SUBJECT: Describing breach of computer security to specify obtaining data

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson
0 nays
1 absent — Leach

WITNESSES: For — (*Registered, but did not testify*: Jessica Anderson, Houston Police Department)

Against — (*Registered, but did not testify*: Mark Bennett, Harris County Criminal Lawyers Association)

On — Kate Murphy, Texas Public Policy Foundation

BACKGROUND: Penal Code, sec. 33.02 establishes penalties for breach of computer security involving the intent to harm or defraud another or to alter, damage, or delete property. The penalty for such an offense ranges from a a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000) to a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000) depending on the entity that owns the computer, network, or system and the aggregate dollar amount of the loss incurred by the victim.

DIGEST: CSHB 896 would expand the description of breach of computer security involving the intent to harm or defraud another or to alter, damage, or delete property. It would be a crime for a person to access a computer, computer network, or computer system owned by the government, a business, or another commercial entity:

- in violation of a clear and conspicuous prohibition by the owner or a contractual agreement to which the person had expressly agreed; and
- with the intent to obtain or use a file, data, or proprietary

information stored in the computer, network, or system.

For a breach of computer security crime described above, the bill would create a defense to prosecution if the actor's conduct was taken pursuant to a contract with the owner of the computer, network, or system to:

- assess the security of the computer, computer network, or computer system; or
- provide other security-related services.

The bill would take effect September 1, 2015, and would apply only to an offense committed on or after that date.

**SUPPORTERS
SAY:**

CSHB 896 would make it easier to prosecute computer hackers who maliciously breach computer security without necessarily demonstrating intent to defraud or harm another or alter, damage, or delete property. This intent can be difficult to prove under current law because hackers often take information or data for reasons other than to cause harm to the owner. For example, some hackers are simply interested in accessing, disseminating, or selling information that does not belong to them. This bill would allow proof of obtaining or using a file, data, or proprietary information stored in the computer, network, or system to serve as proof of intent to defraud or harm another or alter, damage or delete property.

This bill primarily would be used to target individuals who commit crimes significant enough to be punished under the more severe penalties in Penal Code, sec. 33.02. It would place an emphasis on hacking that causes a significant amount of damage and on individuals who hack into government or critical infrastructure facility computers, networks, and systems.

**OPPONENTS
SAY:**

CSHB 896 is overly broad and would criminalize activities that are not generally considered hacking. It would criminalize accessing computers, networks, or systems in violation of contractual agreements if the person intended to obtain or use a file, data, or proprietary information. That provision could be used to prosecute violations of terms of service agreements, which the vast majority of the public do not read. Any time someone accesses any website or network, that person could be using data

— and if that person did so in violation of a terms of service agreement, that person could be prosecuted under this bill. There is already extensive law that protects parties to contracts, and the criminal justice system should not be used to enforce these contracts.

OTHER
OPPONENTS
SAY:

Language in the bill as introduced would have made it easier for a prosecutor to convict a defendant of the offense in question by showing that a hacker who accessed a computer without permission did so with intent to obtain a benefit and not necessarily with intent to cause harm or damage property. It is not clear that CSHB 896 would allow a prosecutor to obtain a conviction for a breach of computer security described in the bill without first demonstrating that the offender intended to defraud or harm another or alter, damage, or delete property.

NOTES:

The committee substitute differs from the filed bill in that CSHB 896 would add to the description of a breach of computer security under Penal Code, sec. 33.02(b-1) that the person, in violation of a clear prohibition or contractual agreement, accessed a computer, network, or system owned by a government or business or other commercial entity with the intent to obtain or use a file, data, or proprietary information stored within.

CSHB 896 removed language in the bill as introduced that would have created an offense for a person who, in violation of a clear prohibition or contractual agreement, breached computer security with the intent to obtain a benefit. The committee substitute also would create a defense to prosecution for actions taken under contract to assess the security of a computer, network, or system.

The companion bill, SB 345 by Huffman, was approved by the Senate on April 9 and referred to the House Criminal Jurisprudence Committee on April 15.

SUBJECT: Pre-inspection license for certain assisted living license applicants

COMMITTEE: Human Services — committee substitute recommended

VOTE: 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer
0 nays

WITNESSES: For — Donna Hermann, Belmont Village Senior Living; Rose Vera, Silverado Senior Living; Michael Crowe, Texas Assisted Living Association; (*Registered, but did not testify*: Alyse Meyer, LeadingAge Texas; Deanna L. Kuykendall, Texas Alliance of Brain Injury Providers; Diana Martinez, Texas Assisted Living Association; Rachel Hammon, Texas Association for Home Care and Hospice; Scot Kibbe, Texas Health Care Association)

Against — None

On — Amanda Fredriksen, AARP; Patty Ducayet, Long-term Care Ombudsman Program; (*Registered, but did not testify*: Calvin Green, Department of Aging and Disability Services)

BACKGROUND: Licensure for an assisted living facility in Texas is a two-step process. Department of Aging and Disability Services (DADS) staff must first conduct a Life Safety Code inspection to ensure the facility meets requirements regarding construction and fire safety. After DADS determines that the building meets the Life Safety Code requirements, at least one but not more than three residents may be admitted to the facility. Once the facility has between one and three residents, it must submit written notice indicating that the facility is ready for an on-site health inspection, part of the agency's required survey for licensing a facility. A license is granted upon successful completion of these two inspections.

DIGEST: CSHB 1769 would change the current licensing practice for assisted living facilities in good standing with DADS. An assisted living facility in good standing could request an initial license that did not require an on-site

health inspection.

The applicant would be considered in good standing if it had operated an assisted living facility in Texas for six consecutive years, during which time none of the applicant's facilities:

- had a violation resulting in harm or an immediate threat of harm to a resident likely to cause serious injury, impairment, or death; and
- had sanctions of any kind imposed against them, including civil or administrative penalties, denial, suspension, or revocation of a license, or emergency closure.

The bill would prohibit DADS from requiring an assisted living facility to admit residents before DADS issued the license. Providers would be required to submit policies and procedures to DADS for approval and to verify employee background checks and credentials.

The bill would require DADS to conduct a survey of the facility within 90 days of the initial license being issued. Until the survey was completed, the facility would be required to disclose to any residents and prospective residents that DADS had not yet completed the survey until the survey was completed.

The bill would take effect September 1, 2015. The Health and Human Services executive commissioner would be required to adopt rules necessary to implement the law's changes as soon as practicable after the effective date.

**SUPPORTERS
SAY:**

CSHB 1769 would change the current licensing practice for assisted living facilities in good standing to allow for a more thorough and efficient process. Under current law, new assisted living facilities must admit one to three residents after the Life Safety Code inspection and before submitting written notice to DADS indicating that the facility is ready for a health inspection, a process that has led to unreasonably long wait times for facility approval. In 2014, new facilities waited more than a month on average before DADS was able to complete the second inspection and grant licensure.

The current process places a few residents at the facility before approving a license, but this is far too small a sample size and creates uncertainty for families of prospective residents awaiting a placement because the provider cannot predict a move-in date. Waiting for licensure has meant housing future residents in hotels and having the facility's staff take care of residents 24 hours a day at the hotel. Getting facilities open in a more timely manner would save residents and their families a great deal of stress.

The bill also would enable a more cost-conscious approach to licensure for facilities. Currently, the process requires facilities to hire and train many more staff than they have residents. This can mean that as many as 35 staff members are caring for only three residents, which is inefficient and unnecessary.

The good standing requirement in the bill would ensure the safety of residents because only established and reputable operators with a successful six-year track record with DADS could obtain the early license. The definition of good standing also strikes the right balance by setting high facility operator standards without ruling out facilities that have recorded minor violations that do not put residents at any serious risk.

The bill would require that facilities disclose to residents and prospective residents the fact that a survey has not been completed. Providers would inform residents about this during the intake process and would post notice within the facility. Families would have access to the same information.

The bill would bring Texas standards for licensing in line with those of other states. In many states, facilities can admit residents after passing a Life Safety Code inspection, and granting licensure to assisted living facilities before the health inspection is the norm.

**OPPONENTS
SAY:**

When the state issues a license, it is putting its seal of approval on that entity, a step that should not be taken lightly. Residents and their families would see licensure as a state endorsement. Assisted living facilities in good standing instead should be issued a temporary license, not full licensure as the bill would allow. That would convey to the public that

certain licensing requirements had not yet been met. The public deserves a trusted inspection process that evaluates these facilities to meet the needs of older Texans.

It is important to conduct an on-site health inspection while a few residents are living in the facility, as current law requires. The bill could result in licenses being granted to some assisted living facilities before inspectors could make key determinations, including: whether assisted living was the appropriate place for residents or whether a higher level of care was required; if residents had been assessed and an individualized service plan has been developed to meet their needs; whether residents were able to evacuate the building; or whether staff were administering medications safely to residents. These are fundamental responsibilities of an assisted living facility that would not be evaluated under this bill and could be important to the safety and wellbeing of assisted living residents.

The bill's definition of good standing would be insufficient and would take into account only the most egregious violations. Some violations could be serious without qualifying as resulting in harm or immediate threats. This could lead to an operator violating certain rights of residents while still meeting the criteria for the early license. These rights include a 30-day notice before discharge, the right to practice the religion of one's choice, and the right to criticize one's care. The state should ensure that basic rights are being honored before granting a facility its license.

Requiring disclosure to residents and prospective residents that DADS had not yet conducted the required survey may not be sufficient, especially for residents in memory care units suffering from Alzheimer's disease and dementia. National studies of people living in assisted living indicate that 60 percent of this population suffers from dementia. These residents may not be capable of understanding the implications of the situation, and the bill should require that disclosure be directly provided to a resident's family as well.

NOTES:

Like the committee substitute, the bill as introduced would have prevented DADS from requiring that a license applicant admit a resident to the facility before the department conducted an on-site health inspection. None of the other provisions in the committee substitute, other than the

effective date, appear in HB 1769 as introduced.

In its fiscal note, the Legislative Budget Board estimates a cost of about \$329,000 due to the cost of DADS conducting an additional 90 initial health inspections annually during fiscal 2016-17.

The Senate companion bill, SB 785 by Uresti, was placed on the intent calendar April 13 and not again placed on the intent calendar April 16.

SUBJECT: Voluntary donation of state employee sick leave time

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

WITNESSES: For — Gary Chandler, Texas DPS Officers Association; (*Registered, but did not testify*: David Sinclair, Game Warden Peace Officers Association; Harrison Hiner, Texas State Employees Union; Deborah Ingersoll, Texas State Troopers Association; Lon Craft, Texas Municipal Police Association; Denee Booker; Randall Chapman)

Against — None

BACKGROUND: Government Code, ch. 661 establishes sick leave for state employees. State employees with serious injuries or illnesses or employees who have immediate family members with serious injuries or illnesses may use personal sick leave or time from the sick leave pool.

State employees may voluntarily transfer accrued sick leave time into a pool for other employees. A state employee may use time from the pool if the employee has used all of the employee's personal sick leave time because of a catastrophic illness or injury or a previous donation to the pool. An employee withdrawing time from the sick leave pool must have approval from the pool administrator and may not withdraw time from the pool except for a catastrophic illness or injury of the employee or a family member. Time withdrawn is limited to the lesser of 90 days or one-third of the total time in the pool.

DIGEST: CSHB 1771 would amend Government Code, ch. 661 to allow state employees to donate part or all of their accrued sick leave to another employee within the same state agency.

The receiving employee would have to have exhausted the employee's

personal sick leave, including any time the employee was eligible to withdraw from the sick leave pool. An employee could use donated sick leave only for certain purposes.

The employee donating time to the sick leave pool could not receive compensation or any gift in return for the donation.

An employee receiving time from the sick leave pool could not receive service credit in the Employees Retirement System of Texas for any donated sick leave time left unused on that employee's last day of employment.

The bill would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 1771 would offer a measure of protection to a state employee faced with a serious health condition affecting the employee or a family member. Currently, once an employee exhausts the employee's personal sick time and time from the sick leave pool, the employee must choose to take leave without pay, terminate employment, or return before the employee or family member has fully recovered. CSHB 1771 would protect an employee from having to make this difficult decision.

The bill also would allow donating employees to have more control over who received their sick time. The current sick leave pool is a general pool to which every agency employee may donate without notice of who is receiving their time. CSHB 1771 would allow employees who might not otherwise donate their sick time to donate time to a particular individual without worrying about the time being used improperly.

CSHB 1771 would not open sick leave to abuse. While the bill would not cap an individual's donated sick leave time, management would continue to have authority over the employee, with likely consequences for abuse of sick leave time. Donating employees would not be obligated to donate their time and likely would be aware of co-workers using such time inappropriately.

**OPPONENTS
SAY:**

CSHB 1771 could contribute to a loss of productivity. Employers typically are sympathetic and flexible with employees who have seriously

ill family members, but CSHB 1771 could create an economic burden from employees exhausting leave time they might otherwise not use. Extended sick time can leave agencies short staffed with no resolution for how to cover responsibly for an absent employee.

CSHB 1771 would not adequately safeguard against improper use of individually donated sick leave time. Currently, an employee may use personal sick leave time and withdraw, at most, 90 days from the sick leave pool. CSHB 1771 would not limit the amount of donated time an employee could receive from another employee in the agency.

NOTES:

CSHB 1771 differs from the bill as introduced in that it would prohibit the use of donated sick leave days toward retirement purposes.

The Senate companion bill, SB 1599 by Kolkhorst, was referred to the Senate Business and Commerce Committee on March 23.

SUBJECT: Allowing cities to provide containers for property of evicted persons

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Oliveira, Simmons, Collier, Fletcher, Rinaldi, Romero, Villalba
0 nays

WITNESSES: For — Brian England, City of Garland; John Willis; (*Registered, but did not testify*: David Mintz, Texas Apartment Association; Nate Walker, Texas Family Council)

Against — None

BACKGROUND: Property Code, sec. 24.0061 provides the process for a landlord to take possession of a property after a successful eviction. After a court has issued a writ of possession, a police officer is required to post a written warning that the writ has been issued. The warning must provide a date on or after which the writ will be executed, which cannot be sooner than 24 hours after the warning has been posted.

To execute the writ of possession, the officer delivers possession of the premises to the landlord and instructs the tenants to leave, or if they do not comply, physically removes them. The officer also instructs the tenant to remove, or to allow another authorized person to remove, the tenant's personal property from the premises immediately. The property removed from the premises and placed outside at a nearby location cannot block a road or sidewalk and cannot be placed outside while it is raining, sleeting, or snowing.

DIGEST: CSHB 1853 would allow municipalities to provide, without charge to the landlord or to the owner of personal property removed from a rental unit, a portable, closed container to store the personal property after an eviction. The municipality could dispose of the contents of the container by any lawful means if the owner of the property did not remove it from the container within a reasonable time after the property was placed in the container.

**SUPPORTERS
SAY:**

CSHB 1853 would protect tenants' personal property from looting and weather damage by allowing cities to provide containers for belongings of people who were evicted. Under current state law, a writ of possession can result in a pile of personal property, which may include family heirlooms, prescription medicine, and electronics, being left on the curb. Bystanders often will rummage through tenants' personal property, scattering debris across the lawn and street, and what is not taken may be left in the rain and sun for weeks.

The city of Garland, during the height of the recession in 2009, passed an ordinance to address looting and other issues associated with frequent evictions. Garland typically uses a 30-yard, roll-off container but can use a smaller or larger container if the need arises. The containers are used solely for evictions and have large notice stickers stating that the contents of the container belong to the tenant and that it is a criminal offense for anyone but the owner to remove the contents. The city of Garland typically keeps the containers in place for 24 to 36 hours before taking the container and its contents to the landfill. The containers are not locked in order to allow the owner to access their belongings at any time. CSHB 1853 would establish a state law that explicitly would allow cities to adopt similar policies.

CSHB 1853 is permissive and allows municipalities to pass an ordinance like Garland's if they so choose. Because the bill is permissive, the notice and time-frame requirements are left to individual municipalities to decide what would work best for their community.

**OPPONENTS
SAY:**

CSHB 1853 should contain more specific notice requirements for tenants. While the bill is well intentioned and likely would benefit tenants, landlords, and neighborhoods, nothing in the bill would clarify what constituted a "reasonable time" before taking away a tenant's personal property or how a tenant could find out when the container would be removed from the property. If 24 hours were considered a "reasonable time," tenants could come home to find their belongings in a container, leave to get help moving them, and then return to find that the container had been taken to the landfill.

NOTES:

CSHB 1853 differs from the bill as introduced in that the substitute

specifies that the landlord, in addition to the owner of personal property, would not be charged for a container in which the property was placed.

SUBJECT: Creating an alternative governance structure for municipal power agencies

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Cook, Giddings, Craddick, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Oliveira, Smithee, Sylvester Turner

0 nays

WITNESSES: For — John Fainter, AECT; Bob Kahn, Texas Municipal Power Agency; *(Registered, but did not testify: Gary Miller, Bryan Texas Utilities; Kean Register, City of Bryan; Darrel Cline and Tom Hancock, City of Garland, Garland Power and Light; Mark Zion, Texas Public Power Association)*

Against — None

On — Tom Oney, LCRA; *(Registered, but did not testify: Brian Lloyd, Public Utility Commission)*

BACKGROUND: Utilities Code, ch. 163, subch. C governs municipal power agencies, which operate municipal power generators that serve multiple jurisdictions. The Texas Municipal Power Agency (TMPA), which serves the cities of Bryan, Denton, Garland, and Greenville, is the only entity that has been created under this subchapter. These cities share joint ownership of TMPA facilities and appoint its board of directors.

As stipulated in Subchapter C, the board of directors of TMPA are responsible for the management, operation, and control of the property of TMPA. TMPA may dispose of assets it considers to be unnecessary for the efficient maintenance or operation of its facilities.

Municipal power agencies can issue debt for construction and improvements to electrical facilities.

Utilities Code, ch. 35 governs competition in power transmission services. Chapter 37, subch. B requires wholesale transmission providers to receive certificates of convenience and necessity (CCN) from the Public Utilities

Commission.

DIGEST: CSHB 1926 would provide statutory authorization for an alternative governance structure for municipal power agencies, such as the Texas Municipal Powers Agency (TMPA), and enable them to wind up some operations by selling property or dissolving it altogether. It would create a new subchapter under Utilities Code, ch. 163. Subchapter C-1 would replicate much of the standing law's language with some exceptions related to governance structure, ability to dispose of property, and ability to dissolve the organization.

For CSHB 1926 to apply to a municipal power agency, ordinances with identical provisions would have to be passed by each participating municipality. The ordinances also would need to state that the municipality had elected that the agency would be governed under Subchapter C-1 on and after the date designated in the ordinance. If each of the constituent municipalities did not pass applicable ordinances, TMPA would continue to be governed under Utilities Code, ch. 163, subch. C.

Agencies governed under CSHB 1926 would have all of the powers granted to municipally owned utilities and municipalities that own utilities, except for the ability to tax.

CSHB 1926 would allow municipal power agencies, such as TMPA, the ability to add or remove a participating entity, such as a municipal government, from participation in the agency's activities. Entities could not be added or removed if their addition or removal would impair the agency's obligations.

The bill would allow the board of directors of an agency to delegate managerial and operational control to employees of the agency. The board would not be able to delegate legislative functions, such as the purchase or sale of agency property, the exercise of eminent domain, adoption or amendment of budgets and rates, and the issuance of debt. Affirmative votes would be needed from a director from each of the participating municipalities, and, if there were more than six directors, a minimum of six affirmative votes would be needed to repeal a resolution delegating

authority to employees.

Directors would have to be registered voters and reside in the area of the appointing municipality, an employee or member of the governing board of an appointing municipality, or a retail electric customer of the appointing municipality. Directors would be considered local public officials under Local Government Code, ch. 171. Directors would serve without compensation, although they would be able to continue receiving compensation from the appointing municipality if they were employees or members of the governing board of the municipality. The governing board of municipalities could remove directors at any time or without cause.

CSHB 1926 would allow participating municipalities to create separate boards of directors — one to administer power generation and another to administer power transmission. To create separate boards of directors, participating municipalities would need to pass concurrent ordinances with identical provisions. There would be no minimum number of members of each board, and each participating municipality would not be entitled to appoint a director to each board.

Municipal power agencies could engage in the provision of wholesale power transmission. Transmission services would be governed under Utilities Code, ch. 35. The agency would need a certificate of convenience for the construction of a transmission facility outside the certificated service areas of the participating municipalities.

A municipal power agency could sell, lease, convey, or otherwise dispose of its property, rights, and interests. If the value of one of these assets was greater than \$10 million, the disposition would have to be approved by each participating municipality.

CSHB 1926 would authorize these agencies to issue public securities for financing or improving electric facilities. These securities could include provisions that would allow third parties to use the agency's facilities, receive output from the facilities, or, in the case of the agency's dissolution, receive an ownership interest in the facilities. Participating municipalities could issue debt to finance their stakes in a municipal power agency.

Municipal power agencies could be dissolved under CSHB 1926. To dissolve an agency, each participating municipality would need to pass ordinances that had identical provisions, state the agency would be dissolved upon the winding up of agency affairs, direct the board or boards to wind up the agency's business, and state the date of the dissolution. An agency could not be dissolved if it would impair the rights or remedies of creditors. The agency would continue to exist to satisfy existing debts, liquidate its assets, and take other action needed to end its affairs.

Remaining assets that belonged to the dissolved agency would have to be distributed to the participating municipalities. These participants would decide how the assets were divided. Any agreements between municipalities and the agency created before the effective date of CSHB 1926 would be enforceable under the terms of the agreement.

CSHB 1926 would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 1926 would provide the Texas Municipal Power Agency (TMPA) with the flexibility and options needed for possible future restructuring, which are not explicitly available to TMPA under current statute. The agency has served its purpose, but the power sales contract between TMPA and its member cities is set to expire on September 1, 2018. This forward-looking legislation considers the future of TMPA and would clean up the Utilities Code to address current circumstances.

Many of the options being considered by the cities participating in TMPA are of questionable validity under the current Utilities Code. These include winding up the organization, transferring assets such as the power plant and transmission lines to one or more of the member cities, or transferring operations and assets to a private operator. Current statute has no provisions for dissolution at all. The bill would allow TMPA to distribute its assets among participating cities upon dissolution and would provide a procedure for dissolution. CSHB 1926 would be needed for the cities to pursue these options.

None of the participating cities gets most or all of its electricity from TMPA. As a result, TMPA is a remnant of 1970s electrical needs. Ending

local governments' participation in TMPA or dissolving the agency could reduce the administrative overhead for participating entities.

Current statute requires the board of directors to be engaged in the operational details of TMPA. This is burdensome, and CSHB 1926 would give the board the legal authority to delegate responsibility to staff. More substantive issues, such as the disposition of assets, would remain with the board of directors under CSHB 1926.

The deregulation of electricity markets has created opportunities for separate generation and transmission businesses. Currently, TMPA faces barriers to participate in these opportunities by having only one board of directors. CSHB 1926 would enable TMPA to split the generation and transmission operations so the agency or its successor organizations could participate in these opportunities.

Currently, only TMPA can issue debt to improve or expand its facilities. CSHB 1926 would allow the participating cities to issue debt to finance their participation in the agency.

TMPA has no plans to expand its transmission capacity beyond its member cities or potential new member cities. It acts as a public service providing power, not a competitor in the transmission business. It is unlikely that transmission lines would be built far away from its current service area or future service area.

OPPONENTS
SAY:

CSHB 1926 would give TMPA the authority to expand its transmission services across the ERCOT service area, which is nearly the entire state. The agency could expand its transmission lines to areas far outside its service area in East and North Texas, running lines in areas with no prior relationship with TMPA. CSHB 1926 would treat TMPA as both a municipally owned utility and as a municipality that owns a utility, entities that are not required to pay property taxes. However, CSHB 1926 would allow TMPA to sell transmission services on the competitive market, putting one foot in the private sector. School districts and other jurisdictions through which TMPA transmission lines could run could be denied property taxes from assets used in TMPA's market-related activities.

NOTES: CSHB 1926 differs from the original bill by adding a provision that would make transmission operations by TPMA subject to Utilities Code, ch. 37, which would require the transmission operations get certificates of convenience and necessity (CCN) from the Public Utilities Commission.

The Senate companion bill, SB 745 by Estes, was considered in a public hearing of the Senate Natural Resources and Economic Development Committee on March 17 and left pending.

SUBJECT: Parole reconsideration for aggravated sexual assault, capital murder

COMMITTEE: Corrections — favorable, without amendment

VOTE: 6 ayes — Murphy, J. White, Allen, Keough, Krause, Tinderholt
0 nays
1 absent — Schubert

WITNESSES: For — Andy Kahan, Victim Advocate City of Houston; Jerry Daniel;
(*Registered, but did not testify*: Justin Wood, Harris County District
Attorney’s Office; Jessica Anderson, Houston Police Department)

Against — Jennifer Erschabek, Texas Inmate Families Association;
Lisa Haufler; Nancy Mcenany; (*Registered, but did not testify*: Robert L
Elzner)

On — (*Registered, but did not testify*: Rissie Owens, Board of Pardons
and Paroles)

BACKGROUND: Under Government Code, sec. 508.145(d)(1), inmates serving time for
certain serious and violent offenses, including aggravated sexual assault,
are not eligible for parole until their actual calendar time served, not
considering good conduct time, equals one-half of their sentence or 30
years, whichever is less, with a minimum of two years. Under
Government Code, sec. 508.145(b) an inmate serving a life sentence for a
capital felony is not eligible for release on parole until actual calendar
time equals 40 years, without consideration of good conduct time.

Government Code, sec. 508.141(g) requires the Board of Pardons and
Paroles to adopt a policy establishing the dates the board may reconsider
for release inmates who previously have been denied release on parole or
mandatory supervision. For inmates convicted of aggravated sexual
assault and those convicted of capital murder who are serving life terms,
the board may reconsider them after an initial denial anytime between one
and five years.

Penal Code, sec. 22.021 makes aggravated sexual assault a first-degree felony (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000).

Under Penal Code, sec. 12.31 the current punishment for a capital felony is death or life without parole, except that a juvenile certified to stand trial as an adult for a capital felony can receive a sentence of life in prison. Before life without parole was established in 2005 as a possible punishment for capital felonies, offenders could receive life in prison, which carried the possibility of parole.

DIGEST: HB 1914 would allow the Board of Pardons and Paroles to delay reconsideration for parole after an initial denial for up to 10 years, instead of five years, for offenders convicted of aggravated sexual assault and offenders serving a life sentence for a capital felony.

The bill would take effect September 1, 2015, and the Board of Pardons and Paroles would be required to adopt a policy consistent with HB 1914 as soon as practicable after that date.

SUPPORTERS SAY: HB 1914 would ensure that a reasonable amount of time elapsed between parole considerations for a person who had committed aggravated sexual assault or a capital felony, which are among the most heinous crimes. The bill is necessary because some victims and their families, including those tragically affected by the 1970s Houston Mass Murders, every few years face a situation where they have to protest the potential parole of the person involved in the crime that affected them or their loved ones.

Under current law, after offenders convicted of aggravated sexual assault or capital murder become eligible for parole and are denied, they must be reconsidered every one to five years. In some cases, the Board of Pardons and Paroles sets off reconsideration of these cases, even for egregious offenses, for three years. Because of this, some families have to begin the painful process of protesting potential parole every two-and-a-half years.

Having these offenders come up for parole consideration so frequently can be traumatic and burdensome for victims and their families, who want to weigh in with the parole board on the decision. Victims and their families

often relive the crime and feel victimized during this process. One family has dealt with this traumatic and heartbreaking situation at 41 parole hearings since their son's death. Allowing these cases to be considered no more frequently than every 10 years could bring a small measure of peace to the families of victims.

The bill would be narrowly focused in addressing this injustice. It would apply only to aggravated sexual assault and capital murder, two of the most serious crimes for which parole is an option. A maximum 10-year period between parole considerations would be reasonable if the parole board thought it was appropriate given the nature of these horrific crimes. If a 10-year setoff period were imposed, offenders still would have the possibility of parole as an incentive for rehabilitation and good behavior in prison without the false hope of release after serving short stints between considerations.

The parole board still would have discretion to handle these cases individually and to grant parole or set the reconsideration of a case anywhere from one to 10 years. The bill would change only the maximum amount of time that the board could wait before reconsidering a case, and the board could continue to schedule reconsiderations in three-year increments. Because of the importance of discretion in the parole process, the bill would not establish a minimum time between parole considerations.

Holding parole considerations frequently can be an inefficient use of resources. Allowing the parole board to schedule consideration of appropriate cases for longer periods than under current law would allow the board to focus its resources on other cases.

**OPPONENTS
SAY:**

The bill is unnecessary because current law creates a fair system of review that balances the needs of victims and offenders by setting a reasonable limit of five years on the maximum amount of time that the parole board may put off a reconsideration of parole. Allowing the parole board to delay parole consideration for up to 10 years after an initial decision for some offenders could be too long. Factors affecting parole decisions can change, and being reviewed for possible parole can give offenders hope and be an incentive for them to work at rehabilitation and demonstrate

good behavior in prison.

Aggravated sexual assault and capital felony offenders now serve multiple decades in prison before being considered for parole the first time. If subsequent parole reviews can be scheduled a decade later each time parole is denied, some offenders might receive few, if any, chances at parole.

**OTHER
OPPONENTS
SAY:**

HB 1914 would not go far enough to serve the interests of justice. The bill instead should set a minimum term between considerations for parole for those convicted of aggravated sexual assault or capital murder. A decade between parole considerations would be appropriate, given the seriousness of these crimes and the pain the process inflicts on victims and their families. A minimum term is needed because, even though the Board of Pardons and Paroles currently has authority to set the reconsideration of cases for up to five years, it still chooses to reconsider some cases every three years, even for the worst crimes.

NOTES:

The Senate companion bill, SB 771 by Hancock, was referred to the Senate Criminal Justice Committee on March 2.

SUBJECT: Texas Farm and Ranch Lands Conservation Program transfer to TPWD

COMMITTEE: Culture, Recreation, and Tourism — committee substitute recommended

VOTE: 4 ayes — Guillen, Frullo, Larson, Murr

0 nays

3 absent — Dukes, Márquez, Smith

WITNESSES: For — Blair Fitzsimons, Texas Agricultural Land Trust; Laura Huffman, The Nature Conservancy; (*Registered, but did not testify*: Richard Lowerre, Caddo Lake Institute; David Foster, Clean Water Action; Christy Muse, Hill Country Alliance; George Cofer and Abe Selig, Hill Country Conservancy; Jen Powis, Katy Prairie Conservancy; Robert Ayres, Land Trust Alliance; Evelyn Merz, Lone Star Chapter Sierra Club; Myron Hess, National Wildlife Federation; Travis Brown, Pines and Prairies Land Trust; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; Ronald Hufford, Texas Forestry Association; Michael Grimes, Texas Land Conservancy; Jim Bradbury and Lori Olson, Texas Land Trust Council; David Weinberg, Texas League of Conservation Voters; Joe Morris, Texas Sheep and Goat Raisers Association; David Yeates, Texas Wildlife Association; Ed Small)

Against — None

On — Carter Smith, Texas Parks and Wildlife Department; (*Registered, but did not testify*: Alan McWilliams, General Land Office)

BACKGROUND: The Texas Farm and Ranch Lands Conservation Program was created by the Legislature in 2005 to facilitate the protection of agricultural land. The program awards grants to qualified entities for the purchase of conservation easements to prevent development, sustain agricultural production, and enhance natural resources. The state does not hold the conservation easement, but instead pairs private landowners with land trusts to establish conservation easements on the land. The program is voluntary for landowners and the land stays in private ownership and

management, subject only to the restrictions of the easement.

The commissioner of the General Land Office chairs the Texas Farm and Ranch Lands Conservation Council, a 10-member advisory council that administers the program. The advisory council consists of four ex officio members of state and federal agencies and six members appointed by the governor representing various aspects of the agriculture industry.

The advisory council evaluates and awards grant applicants based on the following criteria:

- maintenance of landscape and watershed integrity to conserve water and natural resources;
- protection of highly productive agricultural lands;
- protection of habitats for native plant and animal species, including habitats for endangered, threatened, rare, or sensitive species;
- susceptibility of the subject property to subdivision, fragmentation, or other development;
- potential for leveraging state money allocated to the program with additional public or private money;
- proximity of the subject property to other protected lands;
- the term of the proposed conservation easement; and
- a resource management plan agreed to by both parties and approved by the council.

No appropriation has ever been made to the Texas Farm and Ranch Lands Conservation Program. Currently, the program's sole source of funding to provide the grants are federal funds from the General Land Office's Coastal Impact Assistance Program, which limits project locations to the 18 counties in the Coastal Bend area.

DIGEST: CSHB 1925 would transfer the Texas Farm and Ranch Lands Conservation Program from the General Land Office to the Texas Parks and Wildlife Department on September 1, 2016. The General Land Office and Texas Parks and Wildlife Department (TPWD) would be required to enter into a memorandum of understanding, including a timetable and specific steps and methods for the transfer, by January 1, 2016.

The bill would increase the membership of the Texas Farm and Ranch Lands Conservation Council from 10 members to 12 members and would make various changes to the composition of the council. The governor would be required to make appointments by January 1, 2016.

When awarding grants, the bill would require the Texas Farm and Ranch Lands Conservation Council to give priority to applications that protect highly productive agricultural lands that were susceptible to development, including subdivision and fragmentation.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSHB 1925 would move the Texas Farm and Ranch Lands Conservation Program from the General Land Office to the TPWD, a proposal supported by both agencies.

Many landowners face financial pressure to develop or subdivide their property but would prefer to avoid those outcomes if other options existed. The Texas Farm and Ranch Lands Conservation Program gives landowners an option by offering grants for the development of conservation easements. The intent of the legislation that created the program is in alignment with the mission of the TPWD, which already has a direct role in the conservation of the state's land, water, and open spaces. The bill would ensure that the most appropriate agency would be administering this program.

The millions of acres of farms, ranches, and timberlands that make up the private lands in Texas are critical to the state's water security. When open space is lost and land is paved over or divided into smaller and smaller pieces, it can have a profound effect on the recharge zones of our aquifers or the health of our rivers and streambeds. The TPWD has a vast field network of specialists that actively work with landowners to promote the stewardship and conservation of private land. A transfer to the TPWD would provide the program with the tools to make a positive impact on the conservation of Texas' natural resources by mitigating the alarming problem of fragmentation and loss of rural property.

Over the past decade, the conversion rate of Texas' working lands to non-agricultural uses has been tremendous. Because Texas primarily is an agricultural state, it would be appropriate to prioritize applications that protect highly productive agricultural land. It was the original intent of the program to preserve the properties at greatest risk and allow them to continue to be productive farms and ranches.

**OPPONENTS
SAY:**

CSHB 1925 would direct the council to give priority to applications that protect highly productive agricultural land when awarding grants, elevating its importance over other considerations such as habitats of endangered species and conservation of water and natural resources. Because all conservation is important, it would be more appropriate to treat all these objectives equally.

NOTES:

According to the fiscal note, CSHB 1925 would require \$306,234 in general revenue for two full-time employee positions to administer the program and for associated equipment in the first year.

The companion bill, SB 1597 by Kolkhorst, was considered in a public hearing of the the Senate Committee on Agriculture, Water, and Rural Affairs on April 13.

CSHB 1925 differs from the bill as filed by:

- requiring the Texas Farm and Ranch Lands Conservation Council to give priority to applications that protect highly productive agricultural lands that are susceptible to development, including subdivision and fragmentation, when awarding grants;
- changing the council's membership from 11 to 12 members; and
- requiring the presiding officer of the Parks and Wildlife Commission to be the presiding officer of the council. If that individual was not able, the position would pass to the executive director of the department.

SUBJECT: Extending an energy efficiency loan pilot program for certain nonprofits

COMMITTEE: Energy Resources — favorable, without amendment

VOTE: 9 ayes — Darby, Paddie, Anchia, Craddick, Herrero, Keffer, P. King, Meyer, Wu

0 nays

4 absent — Canales, Dale, Landgraf, Riddle

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; Bee Moorhead, Texas Impact; (*Registered, but did not testify:* Luke Metzger, Environment Texas; Dewayne Quertermous, Fort Worth Sierra Club; Madeleine Crozat-Williams, Houston Peace and Justice Center; Michael Jewell, McKinstry; Lon Burnam and Kasey Corpus, Public Citizen Texas; James Williams, Sierra Club; Arthur Browning, Sierra Club, Houston Regional Group; David Weinberg, Texas League of Conservation Voters; John Pitts, Jr., Texas Solar Power Association)

Against — None

BACKGROUND: Government Code, sec. 2305.032 established the LoanSTAR Revolving Loan Program, which is administered by the State Energy Conservation Office (SECO) in the Office of the Comptroller. Under the program, SECO may provide loans to finance energy and water efficiency measures for public facilities. SECO must set the interest rate for a loan low enough to recover administration costs, and a borrower must repay the principal and interest on the loan with the savings accrued from implementing the conservation measure. The funds that are repaid by borrowers then are loaned out again. SECO must ensure that at least \$95 million is available to the program at all times. The program's funding source is petroleum violation escrow funds from the federal government.

In 2011, HB 2077 added Government Code, sec. 2305.0322 directing SECO to establish and administer a pilot program under the LoanSTAR program to provide loans for churches and community-based nonprofit organizations. These loans would be used to finance the implementation

of energy efficiency measures and renewable energy technology in buildings that the organizations own or operate. The pilot program is set to expire December 31, 2015.

DIGEST: HB 2769 would extend by two years, to December 31, 2017, the expiration date of the pilot program to provide loans to churches and community-based nonprofit organizations under the LoanSTAR Revolving Loan Program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 2769 would extend a pilot program through which churches and community-based organizations are eligible for LoanSTAR loans to invest in energy efficiency and renewable energy technology improvements. It took longer than expected to develop a program model suited to nonprofit borrowers, and the application window was narrow. Now that an appropriate program model exists and the community of potential borrowers has been educated, letting the program expire at the end of this year would be a waste of resources and a lost opportunity. Extending the expiration date would provide an opportunity for churches and community-based organizations to be included under SECO's LoanSTAR program.

Churches and other community-based organizations are important partners with the state in serving as a safety net for many vulnerable Texans. Throughout Texas, these organizations assist with food pantries, job training, prison re-entry programs, disaster relief efforts, foster care, and refugee resettlement. They depend on the charitable giving of their members and foundations who want their donations to fund the mission of the organization and not facility upgrades.

Utility bills are one of the largest line items in a church or community-based organization's budget. These organizations often operate out of large, old, and inefficient buildings. Energy efficiency, renewable technology, and water conservation measures on these buildings could lower utility bills, freeing up money to be spent elsewhere on helping their

communities. However, these organizations often lack the capital required to make such investments. The LoanSTAR program has been successful in the public sector, and extending the pilot program would provide an ideal resource for churches and community-based organizations wanting to make such investments.

OPPONENTS
SAY:

Since the pilot program was initiated, one application was received through two separate solicitations. That application was withdrawn and never resulted in a loan. While the LoanSTAR Revolving Loan Program has a record of success for public sector projects, nonprofit projects have proved difficult. Loaning public funds for private projects requires a high level of diligence, control, and risk management that can create a perceived administrative barrier for borrowers. Additionally, loans to non-public entities carry a higher credit risk.

SECO has made numerous attempts to create a program model on its successful public sector loan program that would be attractive to private sector borrowers, but after several offerings and extensive outreach, the pilot program has not resulted in any active loans. Allowing the pilot program to expire would allow SECO to free up funds for interested public borrowers that are currently allocated for this pilot program.

Since tailoring the LoanSTAR model to nonprofit projects has proved difficult, it might be more appropriate for churches and community-based organizations to pursue other funding options that could offer more flexibility. For example, the Property Assessed Clean Energy (PACE) program would allow churches and community-based organizations to pursue improvements using property assessments on their buildings as a repayment mechanism.

OTHER
OPPONENTS
SAY:

Historically, the LoanSTAR Revolving Loan Program has been reserved for public entities. The funds available in the LoanSTAR program are limited and should not be used to finance loans for churches and community-based organizations.

SUBJECT: Authorizing annual Higher Education Fund allocations

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 8 ayes — Zerwas, Howard, Alonzo, Crownover, Martinez, Morrison, Raney, C. Turner

0 nays

1 absent — Clardy

WITNESSES: For — (*Registered, but did not testify*: Susan Everett; Julie Lawrence)

Against — None

On — Robert Duncan, Texas Tech University System; (*Registered, but did not testify*: Thomas Keaton, Texas Higher Education Coordinating Board)

BACKGROUND: Texas Constitution, Art. 7, sec. 17(a) requires the Legislature to authorize allocations under the Higher Education Fund (HEF) to provide funding for capital improvement projects and debt service at public higher education institutions that are not eligible for Available University Fund (AUF) funding. The HEF is a counterpart to the Permanent University Fund (PUF), which provides similar funding to the University of Texas System and many institutions in the Texas A&M University System.

Total HEF distributions appear in the general appropriations act and flow through an equitable formula allocation to institutions over a 10-year period. The formula is based on three elements: space deficit, facilities condition, and institutional complexity. The formula also includes a separate allocation to the Texas State Technical College System, which is capped at no more than 2.2 percent of the total HEF allocation. The balance of the HEF funds is then distributed by the formula.

Under the Texas Constitution, every 10 years the Legislature is required to review the HEF allocation methodology, including the allocation formula

and appropriation level. Under Art. 7, sec. 17(a), once every five years the Legislature may review the allocation methodology for the following five years and may make an adjustment if the change receives a two-thirds vote. The 79th Legislature in 2005 increased by 50 percent the annual HEF appropriation beginning in 2005 from \$175 million to \$262.5 million.

This year marks the end of a HEF appropriation decennium, and the 84th Legislature is authorized by the Texas Constitution to review and increase or maintain the appropriation level and allotment of the previous cycle for the next 10 years.

DIGEST: CSHB 2848 would distribute Higher Education Fund (HEF) allocations to eligible institutions through an equitable formula and would provide adjustments for appropriations to specific institutions.

The bill would authorize two potential courses of action for the amount and allocation of HEF funding, depending on the action of 84th Legislature. The first potential funding allocation, authorized by Education Code, sec. 62.021(a) as amended by the bill, would maintain the current total HEF appropriation level at \$262.5 million per year across the HEF eligible institutions for the next 10 years. The second potential funding allocation, authorized by Education Code, sec. 62.021(a-1) as amended by the bill, would increase the appropriation level by 50 percent to \$393.7 million per year for the next 10 years.

The allocations in subsection (a-1), which assume an increase in HEF funding, would be dependent upon the Legislature approving an amount in the general appropriations act sufficient to cover this increase for fiscal 2016-17. If the Legislature did not increase the appropriation to fund this change, subsection (a-1) would have no effect, and the funding level would remain at \$262.5 million per year and would be allocated as stipulated by subsection (a).

CSHB 2848 also would make technical changes in the equitable formula, repeal and update obsolete language, and specify that the constitutional changes would apply each fiscal year beginning September 1, 2015.

The bill would take effect August 31, 2015, except that the overall increase in the allocation would have to be approved by a two-thirds vote of the membership of each house, as required by Texas Constitution, Art. 7, sec. 17(a).

**SUPPORTERS
SAY:**

CSHB 2848 would allocate funds that are vital to address improvement and maintenance projects at about 30 of the state's public institutions of higher education. The Higher Education Fund (HEF) provides funding for certain institutions to update facilities, address deferred maintenance projects, and keep up with technology needs.

In the past 10 years, higher education institutions have experienced rapid enrollment growth and fast-paced changes in the technology needed in classrooms. The HEF funds contained in CSHB 2848 help compensate institutions for swelling student populations and reduced purchasing power due to inflation. This funding would allow schools to keep moving forward, maintain their quality of education, and prevent buildings and classrooms from falling into disrepair. HEF funds go toward important capital projects that can benefit an entire region. For instance, this funding could help build facilities used to train more nurses to address a nursing shortage in an area.

CSHB 2848 reflects a HEF allocation methodology that is reviewed and set by a study group composed of the institutions in partnership with other stakeholders. The bill's increased HEF funding component reflects the coordinating board's recommendation from this study group that funds be increased by 50 percent for the next 10 years. An increase of 50 percent is consistent with past increases from one HEF cycle to the next. HEF funding for these important capital projects is not based on specific outcomes, but it does address increases in enrollment and needed maintenance projects.

All public institutions of higher education except community colleges receive funding for construction and other capital projects, either through the Permanent University Fund (PUF) or the HEF. HEF funds, which ensure that HEF institutions remain on a comparable footing with PUF institutions, are for limited purposes related to academic facilities, and may not be used solely to fund student housing, intercollegiate athletics,

or auxiliary projects. However, over the past 10 years, PUF institutions have received a great deal more funding for capital projects, and more funding is needed for HEF institutions to regain parity.

The proposed increase to HEF funding would be a wise investment not only for the present but also for the next 10 years. Although CSHB 1 as passed by the House would place the additional funding needed to increase HEF in Article 11 of the budget, the Senate version of the budget would provide the additional funds needed. As the budget process progresses, there still will be opportunities to pass a budget that would finance the increased HEF allocations provided in CSHB 2848.

OPPONENTS
SAY:

Although the kind of funding in CSHB 2848 is essential for some institutions, the Legislature should evaluate each institution's request for state capital construction funding individually, rather than together in a package. This would allow the Legislature to determine on a case-by-case basis whether the authorized HEF funds were the best investment.

The state appropriates a great deal of money to public higher education, particularly for capital construction through tuition revenue bonds, PUF, and HEF. However, the Legislature is not holding the institutions accountable for reaching any outcomes in return for this investment. The state needs these institutions to produce graduates, not new buildings. Institutions instead should be increasing access and affordability because new buildings provide no benefit if students cannot afford or are otherwise unable to access higher education.

OTHER
OPPONENTS
SAY:

CSHB 2848's authorization of increased general revenue allocations for HEF for the next 10 years would increase state spending and would not be fiscally responsible.

NOTES:

If the Legislature approved an increased funding allocation for the Higher Education Fund, CHSB 2848 would have a negative fiscal impact of \$131.25 million per year in general revenue funds, totaling \$262.5 million in general revenue for fiscal 2016-17. If the Legislature did not approve this increased funding, the Legislative Budget Board estimates there would be no fiscal impact to the state.

CSHB 2848 differs from the bill as introduced in that it would make technical adjustments to some of the institutions' allocations.

SB 1191 by Seliger would increase the overall HEF appropriation by \$131.25 million, similar to the approach outlined in Education Code, sec. 62.021(a-1) as amended by CSHB 2848. SB 1191 was passed by the Senate on April 9.

SUBJECT: Amending conditions for payment of legal costs by indigent defendants

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Herrero, Moody, Canales, Hunter, Shaheen, Simpson
0 nays
1 absent — Leach

WITNESSES: For — Rebecca Bernhardt, Texas Fair Defense Project; (*Registered, but did not testify*: Sarah Pahl, Texas Criminal Justice Coalition)

Against — None

On — Wesley Shackelford, Texas Indigent Defense Commission; (*Registered, but did not testify*: Mark Walters)

BACKGROUND: Code of Criminal Procedure, art. 42.12, sec. 11(a) allows a judge to impose upon a defendant certain conditions of community supervision (probation) that may include reimbursing a county for the costs of appointed legal counsel. Under sec. 11(b), a judge is required to consider the defendant's ability to pay in ordering the defendant to make such payments.

Under Code of Criminal Procedure, sec. 26.05(g), which governs the compensation of court-appointed attorneys, a judge must make a determination that the defendant is able to pay any costs of legal services before ordering a defendant to pay such costs.

DIGEST: HB 3633 would limit the amount a defendant would be required to reimburse a county for the costs of appointed legal counsel. It also would require a judge, in setting conditions for probation, to determine a defendant's financial resources in deciding the extent to which a defendant should reimburse a county for the costs of appointed legal counsel.

Repayment cap. The bill would prohibit a judge from ordering a defendant to pay any amount that exceeded the actual costs, including expenses and costs, paid by the county in attorney's fees for an appointed attorney. If the defendant was represented by a public defender's office, the judge could not order an amount that exceeded the actual amount, including expenses and costs, that the county otherwise would have paid to an appointed attorney had the county not had a public defender's office. This also would apply to reimbursement of attorney's costs as part of a condition of probation under Code of Criminal Procedure, art. 42.12.

Indigency determination. Under the bill, before a judge could impose a condition of probation requiring a defendant to reimburse the county for the cost of legal representation, the judge would have to make a determination that a defendant had adequate financial resources to offset these costs in part or in whole. The judge would set any reimbursement in an amount the defendant was deemed able to pay, as long as the amount did not exceed actual costs as previously prohibited.

Previous reimbursement. HB 3633 also would prohibit a judge from imposing a condition of community supervision requiring the defendant to reimburse a county for costs of legal services if the defendant has already paid the obligation during the pendency of the charges or as conviction costs. The court would be required to consider the ability of the defendant to make payments before ordering the defendant to make payments.

Effective date. This bill would take effect September 1, 2015, and would only apply to criminal hearings or proceedings that begin on or after the effective date of this act, regardless of when the underlying offense was committed.

**SUPPORTERS
SAY:**

HB 3633 would ensure that defendants were not required by the county to pay for legal services in an amount greater than the actual costs for those services. By creating a repayment cap, this bill would eliminate the possibility of a defendant making continuous payments toward an order to pay legal services during pendency of the charges that exceeded actual costs of the services by the end of the case.

If a case goes on for a long time while a defendant is making open-ended

monthly payments, there is a possibility for those payments to exceed the costs that counties actually incurred paying appointed legal counsel. Several attorneys have reported incidents under current law in which their defendant clients were overcharged for these legal services.

HB 3633 would protect indigent defendants by requiring a judge to first determine, rather than merely consider, whether the defendant had the financial resources to pay for legal services before imposing an order upon the defendant for payment. Strengthening this requirement in the code would clarify that a judge cannot unreasonably impose a condition upon an indigent defendant to pay a county for legal services. The bill would uphold constitutional protections afforded to indigent defendants, who have the right to legal representation despite lacking the means to pay.

This bill would make requirements clearer in two competing statutes, which currently impose different requirements on defendants in similar situations. Art. 26.05(g) requires a judge to first make a determination on a defendant's ability to pay before imposing an order for payment of costs, while art. 42.12, sec. 11 allows the judge to order payment without first determining the defendant's ability to pay. This bill would clarify language and mirror the statutes to reduce confusion in the code.

**OPPONENTS
SAY:**

HB 3633 would not address any real issue because there have not been confirmed cases of actual overcharging of legal services to defendants. It would act only to make it explicit that counties cannot overcharge, when it has not been proven that counties are in fact overcharging defendants for the costs of legal services.

NOTES:

The Senate companion bill, SB 544 by West, was referred to the Senate Criminal Justice Committee on February 18.